

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHEN WEI REN,  
Petitioner,

vs.

JAMES SHERMAN, Warden  
FCI McKean,  
Respondent.

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:  
: C.A. No. 04-300E  
: (McLaughlin, J.)  
: (Baxter, M.J.)  
:  
:  
:

PETITIONER'S OBJECTIONS TO THE REPORT AND  
RECOMMENDATION OF THE U.S. MAGISTRATE JUDGE

NOW COMES, the Petitioner, Chen Wei Ren, and appearing pro se, hereby files this his Objections to the Report and Recommendation of the U.S. Magistrate Judge ("Report"), as follows:

Discussion

The Report found that the Respondent credited Petitioner's federal sentence to the date he would have been released from state custody, which was May 14, 2000, and that the Bureau of Prisons gave a nunc pro tunc designation for that date. (see Report).

The Report misses the issue at bar. Petitioner has no problem with the Bureau of Prisons crediting Petitioner's time from the date he would have originally released from state custody, had he not been in federal pretrial custody on a writ of habeas corpus. The issue, however, is the date. Attached hereto as Exhibit A, is a document from the New York Department of Corrections documenting that his release date would have been November 13, 1997, had he not been in federal custody. The May 14, 2000 date is the date which was the maximum release. Had federal authorities not kept Petitioner in such a lengthy pretrial detention, Petitioner would have been released from state custody long before May 14, 2000. Therefore, the writ should be granted, and the Respondent ordered to give Petitioner credit from November 13, 1997 to May 31, 2000, the date of federal sentencing.

The Third Circuit's holding in Rios v. Wiley, 201 F.3d 257 (3rd Cir. 2000) does not dictate a different result. Rios is completely distinguishable from the instant case. Unlike the Rios petitioner, Petitioner Chen was in federal pretrial custody, on a writ of habeas corpus ad prosequendum, for over three years, and because of this lengthy detention, Petitioner was denied the opportunity for release at his earliest date of November 13, 1997. Because of this, Petitioner's Due Process Rights have been violated, and Chen's nunc pro tunc designation should have been to November 17, 1997, pursuant to the Third Circuit's holding in Barden v. Keohane, 921 F.2d 476, 479 (3d Cir. 1990).

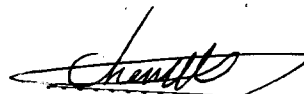
Conclusion

Based on the above, the Report should be rejected, and Chen's petition should be granted in its entirety.

WHEREFORE, facts and premises considered, Petitioner prays that this Court grant this motion as moved.

Dated: July 1st, 2005

Respectfully Submitted:



Chen Wei Ren  
Reg. No. 38688-054  
FCI McKean  
P.O. Box 8000  
Bradford PA. 16701-0980

State of New York  
Department of Correctional Services  
Gouverneur Correctional Facility  
INMATE RECORDS OFFICE  
P.O. Box 370  
Gouverneur, New York 13642-0370  
(315) 287-7351

Philip Coombe, Jr.  
Acting Commissioner

John R. O'Keefe  
Superintendent

March 13, 1996

U.S. Attorney's Office, SONY  
One St. Andrews Plaza  
New York, NY 10007  
Attn: Joe Doherty

RE: Chen, Weiren aka Ye Chun Jai

DIN: 95B7734

NYSID: 7579650Q

Dear Sir or Madam:

The warrant listed below has been received from your office and has been lodged as a detainer against the aforementioned inmate.

Warrant #: unknown  
Docket #: S4 95 Cr. 893  
Charge(s): Kidnapping &  
Firearms  
Court: U.S. District Court - Southern  
Issue Date: 2/21/96

If this inmate needs to appear in court on these charges, an original Order to Produce should be sent to us at least two weeks prior to the appearance date. We require this much notice so that transportation may be arranged.

Detainer  
Page 2

Your agency will be notified prior to his release. The inmate's earliest possible release date is 11/13/97.

If you require any further information, please call us at (315) 287-7351, ext. 232.

Very truly yours,

John R. O'Keefe  
Superintendent

*Kari Mahoney*  
Kari S. Mahoney, Clerk II  
Inmate Records Office

cc: Guidance  
Parole  
Legal File  
Inmate

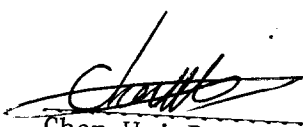
CERTIFICATE OF FILING AND SERVICE

I do hereby certify that on this the 1st day of July, 2005, I placed in the U.S. Mail, first-class postage prepaid, the original and one copy of PETITIONER'S OBJECTIONS TO THE REPORT AND RECOMMENDATION OF THE U.S. MAGISTRATE JUDGE, to the following, for filing in this Court:

Office of the Clerk  
United States District Court  
Western District of Pennsylvania  
P.O. Box 1820  
Erie PA 16507

I do further certify that on this the 1st day of July, 2005, that I mailed a true and correct copy of this pleading to counsel for the Respondent, via first-class, postage prepaid, U.S. Mail, for delivery to:

Ms. Christy C. Wiegand, Esq.  
Assistant U.S. Attorney  
U.S. Courthouse and Post Office  
700 Grant Street, Suite 400  
Pittsburgh PA. 15219

  
Chen Wei Ren